

REMARKS

This amendment is being filed responsive to the non-final Office Action mailed November 2, 2006. In that Office Action claim 44 was rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Claims 23-27, 29-35, 37, 38, and 40-44 were rejected under 35 U.S.C. §102(e) as being anticipated by Jijina et al. (US 2003/0103599). Claims 23, 24, 26, 28, 30, 32, 36, and 39 were rejected under 35 U.S.C. §103(a) as being obvious over do Nascimento, JR. (US 2002/0128000) in view of Heywood et al. (US 2002/0042266). Claims 23, 26, and 44 are being amended. Accordingly, claims 23-44 remain pending in the application.

Rejection under §112

Claim 44 was rejected under 35 U.S.C. §112, first paragraph, for the limitation “further comprises the customer initiating *communication* of the message to the customer.” The claim has been amended as suggested by the Examiner. In view of the foregoing, Applicants respectfully submit that claim 44 reasonably conveys to one skilled in the art that the applicant, at the time the application was filed, had possession of the claimed invention. Reconsideration of the rejection under §112 is therefore requested

Rejections under §102(e)

Claims 23-27, 29-35, and 40-44 were rejected under 35 U.S.C. §102(e) as being anticipated by Jijina et al. (US 2003/0103599). Applicant requests that the Examiner withdraw the rejections because Jijina does not disclose each and every element called for in the claims.

Independent Claim 23

Jijina does not disclose all of the limitation of independent claim 23. Jijina discloses a device for implementing a method of routing voice calls to a telematics device. A vehicle phone answers each in-coming voice call when an ignition of the vehicle is on or when the phone is awake. Otherwise, a call-forwarding module transfers

the voice call to a voice mail module of a wireless network. The caller may leave a message at the voice mail module. In contrast to Applicant's invention, Jijina does not disclose what to do with the message once it has been left at the voice mail module.

Jijina does not disclose "*sending a query to the client VCU from the server* for an indication of whether the customer is available in the vehicle for receiving the message" as recited in claim 23. The Examiner cited paragraph 4 of Jijina as disclosing this limitation. But paragraph 4 does not disclose sending a query to the client VCU from the server. Rather, paragraph 4 merely states that the vehicle phone answers incoming calls when the vehicle ignition is on, or when the VCU is awake. Jijina does not teach or suggest querying the vehicle to determine if the vehicle phone will be available to answer a call. Rather than querying the vehicle phone for an indication of whether the customer is available to receive a message, the call-forwarding module merely determines if a call forwarded to the phone is answered within a predetermined time. In other words, Jijina teaches that the call is sent to the vehicle phone prior to determining whether anyone in the vehicle is available to receive the call. In contrast, the limitation of claim 23 queries the client VCU for an indication of whether the customer is available for receiving the message. Delivery of the message is then based on receipt of the indication. For these reasons, Jijina does not disclose all of the limitations of claim 23 because it does not disclose sending a query to the client VCU from the server.

Jijina also does not disclose i) sending a failed delivery message to the client VCU; ii) sending the message to the client for storage on the client VCU; or iii) retrying delivery of the message at a later time after a time interval if the server does *not* receive the indication that the customer is *available* for receiving the message. The Examiner cited paragraph 7 of Jijina as disclosing these limitations. But Jijina does not disclose any of the limitations (i), (ii), or (iii) above. The cited sections of Jijina merely disclose that a call-forwarding module will transfer voice calls to a voice mail module of a wireless network if the forwarding module cannot ascertain that a vehicle phone answered a call within a predefined period. These sections do not disclose sending a failed delivery message to the client VCU or retrying delivery of a message at a later time.

Regarding limitation ii, the cited sections of Jijina do not disclose sending the *message to the client for storage on the client VCU*. Rather, paragraph 7 teaches that a voice call is transferred to a voice mail module. The voice mail module is taught as part of the wireless network rather than part of the vehicle phone.¹ As such, the voice call is taught as being forwarded to the wireless network when the call is not answered rather than to the vehicle phone. Although paragraph 24 discloses that the caller may leave a message at the voice mail module, it does not disclose that the message is sent to the vehicle phone for storage on the vehicle phone. Therefore, the cited references in Jijina do not disclose sending a message to a client for storage on a client VCU. The rejection of claim 23 over Jijina should therefore be allowed because Jijina does not disclose all of the claimed limitations.

Claims 24-31 ultimately depend from claim 23. In view of the reasons articulated above, the Applicants respectfully submit that claims 23-31 are patentable over Jijina.

Dependent Claim 26

Dependent claim 26 is also patentably distinguishable over Jijina because Jijina does not disclose “annunciating to the customer the type of message available for delivery.” Claim 26 has been amended to clarify that the type of message available is announced to the customer and not the caller. Jijina discloses that a voice portal module announces to the caller that their voice call has been forwarded to the vehicle phone. The announcement in Jijina is made to the caller and not the customer in the vehicle. Therefore, because Jijina does not disclose annunciating to the customer the type of message available for delivery, claim 26 is patentable over Jijina.

Dependent Claim 30

Dependent claim 30 is also patentably distinguishable over Jijina because Jijina does not disclose the step of “storing a message for later annunciation to the customer on the client VCU upon the server acquiring an IGNITION OFF status.” As discussed above, Jijina does not disclose the server acquiring an ignition status. Moreover, as

¹ Jijina, U.S. Application No. 2003/0103599, p. 1, par. 0005.

discussed above, Jijina does not disclose storing a message on the client VCU. Therefore, claim 30 is patentable over Jijina because Jijina does not disclose storing a message for later annunciation to the customer on the client VCU upon the server acquiring an IGNITION OFF status.

Dependent Claim 31

Dependent claim 31 is also patentably distinguishable over Jijina because Jijina does not disclose the step of “sending a code to the client VCU from the server representative of the message for later annunciation.” The Examiner cited paragraph 4 as disclosing this limitation. But paragraph 4 merely discloses receiving data calls. The cited reference does not disclose sending a code representative of that data call for later annunciation. Therefore, claim 31 is patentable over Jijina because Jijina does not disclose sending a code to the client VCU from the server representative of the message for later annunciation.

Independent Claim 32

Applicant notes the statement made under item i. on page 5 of the Office Action that “claims 32-35, 37-38, and 41 are of the same scope as claims 23-24, 26-27, and 29-31.” Applicant respectfully disagrees. Although the first step of claim 32 is the same as that of claim 23, each of the remaining steps, even if similar, are different, thus giving claim 32 a different scope. For example, claim 32 calls for *sending a query to the client VCU from the server for an ignition status as an indication of whether the customer is available in the vehicle for receiving the message*. This step is different than in claim 23. Also, this step is not present in the system of Jijina. Although Jijina uses ignition status in deciding whether to answer a call, it does not teach querying of the client VCU from a server for ignition status. Therefore, this limitation is neither disclosed nor suggested in Jijina.

Claim 32 also calls for *re-sending the query to the client VCU from the server for an ignition status if no ignition status is returned from the client VCU to the server*. Jijina does not disclose resending the query because, as discussed above, the cited

portions of Jijina do not disclose sending a query to the client from the server. Therefore, this limitation is not disclosed nor suggested in Jijina.

Like claim 26, claim 32 additionally calls for *annunciating to the customer that a message is available for delivery if the server receives an ignition status indicating that the customer is available*. Therefore, for reasons similar to some of those discussed above in conjunction with claim 26, this limitation is neither disclosed nor suggested in Jijina.

Claims 33-41 ultimately depend from claim 32. In view of the reasons articulated above, the Applicants respectfully submit that claims 32-41 are patentable over the prior art.

Dependent Claim 37

Dependent claim 37 is also patentably distinguishable over Jijina because, like claim 30, claim 37 calls for *storing a message for later annunciation to the customer on the client VCU upon the server acquiring an IGNITION OFF status*. Therefore, for reasons similar to some of those discussed above in conjunction with claim 30, this limitation is neither disclosed nor suggested in Jijina.

Dependent Claim 38

Dependent claim 38 is also patentably distinguishable over Jijina because, like claim 31, claim 38 calls for *sending a code to the client from the server representative of the message for later annunciation*. Therefore, for reasons similar to some of those discussed above in conjunction with claim 31, this limitation is neither disclosed nor suggested in Jijina.

Independent Claim 42

Jijina does not disclose “*retrying to establish a connection between the server and the client VCU*” or “*storing a failed delivery message*” if an initial connection is not established between the server and the client VCU as recited in claim 42. The Examiner

stated that claim 42 is of the same scope as claims 23 and 24 and rejected claim 42 for the same reasons as claim 23. Claim 42 does not call for these limitations, however.

Jijina discloses that the vehicle phone answers incoming calls when the ignition is on or when the VCU is awake. But the cited references in Jijina do not disclose either retrying to establish a connection between a server and the VCU, or storing a failed delivery message, if the ignition is not on or the VCU is not awake. Therefore, Jijina does not disclose all of the limitations of claim 42 because Jijina does not disclose retrying to establish a connection between the server and the client VCU or storing a failed delivery message if the initial connection is not established.

Additionally, Jijina does not disclose *sending a query to the client VCU from the server for an ignition status*. This limitation is similar to claim 23. Therefore, for reasons similar to some of those discussed above in conjunction with claim 23, this limitation is neither disclosed nor suggested in Jijina.

Claims 43 and 44 ultimately depend from claim 42. In view of the reasons articulated above, the Applicants respectfully submit that claims 42-44 are patentable over Jijina.

Commonly-Owned Subject Matter

For the Examiner's information, Applicant notes that, at the time the invention claimed in this application was made, that invention and the subject matter of Jijina were commonly owned or subject to an obligation to be assigned to General Motors Corporation. Assignments of these applications to the common owner have been recorded with the U.S. Patent and Trademark Office. Therefore, Jijina is not available as a prior art reference under Section 103.

Rejections under §103(a)

Claims 23, 24, 26, 28, 30, 32, 36, and 39 were rejected under 35 U.S.C. §103(a) as being obvious over Nascimento in view of Heywood. Applicant requests that the Examiner withdraw the rejections because the Examiner has failed to meet his burden of

establishing a prima facie case of obviousness for claims 23, 24, 26, 28, 30, 32, 36, and 39.

Independent claim 23

The prior art relied upon by the Examiner does not disclose or render obvious the subject matter of independent claim 23. Nascimento discloses a system to determine services available to a mobile communication unit based on the unit's location, speed, and the time of day. Based on local traffic laws, the system may prevent calls from being routed to the mobile unit to prevent the unit from being used while the vehicle is being driven.

In the last Office Action, the Examiner combined the teachings of Nascimento with those of Heyward. Heyward discloses an intelligent mobile unit system for monitoring the locations of a multitude of mobile units using Global Positioning System (GPS) technology. The system is programmed to report the position of the units only when required and enable the host to provide current locations of the units to third parties without requesting information from the mobile unit. This is accomplished through programming the mobile units to transmit a status report upon a predetermined change in status to make efficient use of a wireless network.

Neither Nascimento nor Heyward teach or suggest all of the elements of claim 23. The cited references in Nascimento and Heyward do not disclose what happens if the server does not receive an indication that the customer is available for receiving messages. Claim 23 recites three limitations not found in the cited references:

- i) sending a failed delivery message to the client VCU,
- ii) sending the message to the client for storage on the client VCU, or
- iii) retrying delivery of the message at a later time after a time interval.

The Examiner stated that Nascimento does not show limitations (i), (ii), or (iii).² The Examiner, instead, cited paragraph 13 of Heyward for "storing the data packet

² Office Action dated Nov. 11, 2006, p. 7, par. a.

information in an analogous art for the purpose of conserving wireless resources.”³ The teachings of the cited reference do not teach delivering, or attempting to *deliver a message to the mobile unit*. Rather, the cited reference in Heyward teaches merely that the *mobile unit sends* wireless data packets to a wireless network for storage on a host system. Limitation (i) requires *sending* a failed delivery message *to the client VCU*. Limitation (ii) requires *sending the message to the client* for storage on the client VCU. Limitation (iii) requires retrying *delivery* of the message *to the client VCU*. Nothing in the cited paragraph teaches or suggests sending or delivering a message to the mobile unit. Instead, the cited paragraph teaches the mobile unit sending data to the host. Therefore, the cited references fail to teach or suggest all of the claimed limitation of claim 23.

Claims 24, 26, 28, and 30 ultimately depend from claim 23. In view of the reasons articulated above, the Applicants respectfully submit that claims 23, 24, 26, 28, and 30 are patentable over Nascimento and Heyward.

Dependent Claim 26

Dependent claim 26 is also patentably distinguishable over the combination of Nascimento and Heyward because the cited reference in Nascimento and Heyward *do not teach or suggest announcing to the customer the type of message available for delivery*. The Examiner cited paragraph 121 as disclosing VCM 108 causes audio inquiries to be made through a speaker of the vehicle or displays video inquiries on the display. But the reference does not teach or suggest annunciation the type of message available for delivery. Rather, the cited paragraph teaches that the VCM can be used to query the user for Remote Mobile Modules (RMMs) such as PDAs and cellular phones for use with the VCM. The audio and video inquiries do not involve announcing messages available for delivery to the customer. For these reasons, the cited reference does not teach or suggest the limitations of claim 26.

³ *id.* at p. 7, par. b.

Dependent Claim 28

Dependent claim 28 is also patentably distinguishable over the combination of Nascimento and Heyward because the cited references in Nascimento and Heyward do not teach or suggest *periodically sending a query to the client VCU from the server if the server fails to receive the indication that the customer is available in response to previous queries*. The Examiner cited paragraph 119 of Nascimento as disclosing a periodic inquiry. But the claim limitation calls for a query sent from the server to the client VCU. In contrast, the cited reference teaches a Vehicle Control Module (VCM) in a vehicle sending queries to users in a vehicle. The inquiry does not indicate the availability of a customer, but rather, which Remote Mobile Modules (RMMs), such as PDAs and cellular phones, the user would like to use with the VCM. Moreover, the queries are not periodic, nor are they in response to failure of a server to receive an indication that the customer is available. Therefore, the cited reference does not teach or suggest periodically sending a query to the client VCU from the server if the server fails to receive indication that the customer is available in response to previous inquiries.

Dependent Claim 30

Dependent claim 28 is also patentably distinguishable over the combination of Nascimento and Heyward because Nascimento and Heyward do not teach or suggest *storing a message for later annunciation to the customer on the client VCU upon the server acquiring an IGNITION OFF status*. The Examiner cited paragraph 13 of Heywood as disclosing storing data packet information. This reference, however, does not disclose storing the data packet for later annunciation to the customer as recited in claim 30. Rather, Heywood teaches that the data packet is transferred to the host system. Moreover, the data packet transfer does not occur as a result of the server acquiring an ignition off status. For these reasons, the cited reference does not teach or suggest the limitations of claim 28.

Independent Claim 32

The prior art relied upon by the Examiner does not disclose or render obvious the subject matter of independent claim 32. The prior art relied upon does not show each and every limitation of independent claim 32. Nor has the Examiner pointed to where in the prior art each and every limitation is taught or suggested. Instead, the Examiner has merely stated that claim 32 is the same scope as claims 23, 24, 26, and 30. As noted above, these claims are not of the same scope.

The previously cited references in Nascimento and Heyward do not teach or suggest *annunciating to the customer that a message is available for delivery if the server receives an ignition status indicating that the customer is available* as recited in claim 32. The Examiner has pointed to paragraph 121 as annunciating the type of communication for delivery. As explained in relation to claim 26 above, the cited paragraph does not teach or suggest annunciating to the customer that a message is available for delivery. Rather, the reference teaches that audio and video inquiries may be made by the VCM to the user for Remote Mobile Modules (RMMs) present for use with the VCM. In addition, the inquiries taught in the reference are not a result of the server receiving an ignition status indicating that the customer is available.

Likewise, the previously cited references in Nascimento and Heyward do not teach or suggest *re-sending the query to the client VCU from the server for an ignition status if no ignition status is returned from the client VCU to the server*. The Examiner has provided no reference in Nascimento and Heyward that discloses this limitation. The closest reference provided by the Examiner is paragraph 13 of Heywood. This reference, however, does not disclose storing the data packet for later annunciation to the customer as recited in claim 32. Rather, Heywood teaches that the data packet is transferred to the host system. Moreover, the data packet transfer does not occur as a result of the server acquiring an ignition off status.

Dependent claims 36 and 39 depend from claim 32. In view of the reasons articulated above, the Applicants respectfully submit that claims 23, 24, 26, 28, and 30 are patentable over Nascimento and Heyward.

Conclusion

The methods in claims 23, 32, and 42 are not disclosed or rendered obvious by the prior art. Claims 24-31, 33-41, and 43-44 each ultimately depend from claims 23, 32, and 42 respectively, and should be allowed therewith.

In view of the foregoing, Applicants respectfully submit that all claims are allowable over the prior art and reconsideration is therefore requested. The Examiner is invited to telephone the undersigned if doing so would advance prosecution of this case.

The Commissioner is hereby authorized to charge Deposit Account No. 07-0960 for any other required fees or to credit that same deposit account with any overpayment associated with this communication.

Respectfully submitted,

REISING, ETHINGTON, BARNES, KISSELLE, P.C.

/James D. Stevens/

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